

Writing Medico-legal Reports and Giving Evidence in Court



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Writing medico-legal reports and giving evidence in court

At some stage in your career, you will be asked to prepare a medico-legal report and perhaps give evidence in court.

The most common context for a request for a medico-legal report from a doctor in training (DIT) is in relation to a patient who has been seen by the DIT in an Emergency Department (ED) after an assault. In this case, the request for the report will generally be received directly from the police or via the hospital.

For many doctors the receipt of a request for a medico-legal report or statement is an unwelcome intrusion into their practice of medicine; some may dread the prospect of also potentially having to attend court to give evidence.

The aim of this booklet is to provide guidance on:

- writing a good medico-legal report
- dealing with a subpoena to give evidence
- giving evidence in court.

As always, if you have any questions or concerns about a particular situation, you should contact our Medico-legal Advisory Services team for advice and assistance.

Writing medico-legal reports

The focus of this booklet is on “treating doctor” reports, not independent expert reports.

The majority of the reports you will be asked to prepare are treating doctor reports, that is, factual reports outlining your involvement in the management of a patient. However, you may also be asked to provide your medical opinion, e.g. the prognosis of a soft tissue injury or whether the injuries are consistent with grievous bodily harm. In writing a medico-legal report it is essential that you clearly differentiate between the facts and your opinions.

You are not required to provide an opinion, but you should consider what clinical information can be provided in your report. Ultimately, it is up to the court to decide if the facts of the case meet the various legal definitions of injury. You should only provide an opinion if supported by clinical facts, which should be referred to in your report, and if you have relevant expertise. A clear factual report may reduce the need for the police to obtain a supplementary report or for you to attend court to give evidence.

Before preparing your medico-legal report

You should know the purpose of the report that you have been asked to prepare. For example, if you receive a request from your hospital administration for a report about a patient you have managed, you should ensure that the reason for the request is clear.

Confidentiality

Do you have the patient’s consent to prepare the report? Do not breach your patient’s confidentiality. You must have a signed authority from your patient (if the patient has died, the authority should be obtained from the executor of the patient’s estate). The authority should be recent and specific for the purpose of the report.

Coronial reports

The exception to this requirement is a report for the Coroner. If you are asked to prepare a report for the Coroner, you do not need an authority. However, you should obtain written confirmation from the police or the requesting party that the report is being obtained on behalf of the Coroner. DITs are advised to contact MDA National for assistance before sending reports to the Coroner.

Your medico-legal report

1. Always use the medical records to prepare your report. Do not rely solely on your memory or the instructions from the requesting party.

2. The report should be:

- **factual**
- **relevant to the request**
- **understandable to the audience**
 - a medico-legal report is not a communication with a colleague. If necessary, provide definitions and explanations of medical abbreviations or terminology, e.g. "the patient had tachycardia (rapid heart rate)", "PR (rectal examination)". Do not use legal terminology such as "grievous bodily harm". The provision of a clear explanation and avoidance of medical jargon may prevent an unnecessary trip to court to give evidence (see case history 1).

3. Indicate the name of the requesting party (e.g. police officer), the date of the request and the purpose of the report.

4. At the beginning of the report outline your credentials, including your qualifications and position at the time of the events/incident, e.g. "I obtained my medical degree, MBBS, in 2014. At the time I saw Ms Smith in the Emergency Department on 15 January 2016, I was a second year resident medical officer".

5. The body of the report should be organised and, if the report is long, headings should be used.

There are many ways of formatting a medico-legal report. A suggested format for a report is as follows:

- **patient's name and date of birth**
- **requesting party and date of request**
- **your credentials**
- **facts in chronological order**, including:
 - history and symptoms, e.g. "When asked what happened, Ms Smith stated that..."
 - examination findings
 - investigations
 - provisional diagnosis
 - treatment/management
- **opinion** (if any)
- **response to specific questions** (if any)
- **your signature and date the report was written/signed by you** (see case history 2).

Common pitfalls

Do

- know the purpose of the report
- always use the medical records to assist in the preparation of the report
- ensure the report is well organised, in chronological order and clear
- provide the report within a reasonable timeframe
- personally check and sign your report
- remember you may be cross-examined on your report – only write what you would be prepared to say under oath in court
- if you have any questions or concerns, contact MDA National.

Don't

- provide an opinion beyond your expertise
- act as an advocate for one side or the other
- alter your report at the request of your patient or a third party – if you have received further information or you have made a mistake, you should provide a supplementary report
- use emotive or derogatory language.

Case history 1

The DIT received a request for a report from the police about a 22-year-old man who had been seen by the DIT in ED four months earlier. The DIT reviewed the medical records and noted that she had seen the patient after he had been involved in a fight at the pub and punched in his left eye.

In her report, the DIT noted the findings on physical examination as follows:

“O/E tenderness of the left infraorbital margin and zygoma, with widespread petechiae. GCS 15/15. The left eye had a hyphaema with V/A 6/60...”

The use of complex medical terms in this report means it is more likely that the DIT will be called to give evidence to explain the nature of her findings on physical examination.

It is always best to provide definitions, and explanations of medical terminology and abbreviations.

A better way of describing the findings would have been:

“On examination, I noted that the patient was tender under his left eye (infraorbital margin) and cheek bone (zygoma), with widespread fine bruising (petechiae). The patient was fully conscious (GCS 15/15). There was blood inside his left eye, in front of the iris (hyphaema), with markedly decreased visual acuity (V/A)...”

Case history 2

A DIT, received a request from the police for a report about a young woman who had presented to the ED after an assault. The police wanted details about the patient's injuries.

The police also asked the DIT to include in his report a comment as to whether the injuries were consistent with the offender being guilty of "grievous bodily harm".

The term "grievous bodily harm" is a legal, not a medical, term. Avoid using legal terms in your reports and stick to an explanation which is easily understood.

The DIT sought advice from MDA National and provided the following report to the police:

Sample Report

1. On 1 February 2018 I was contacted by Constable Smith and asked to provide a statement in relation to the care of Jane Doe. Consent for the report was provided by Ms Doe.
2. In preparing this statement, I have referred to the medical records from a consultation with Ms Doe on 1 December 2017. I have a good recollection of the events discussed in this statement and have refreshed my recollection by referring to the medical records.
3. I am a registered medical practitioner. I obtained my medical qualifications, MBBS, following completion of my degree at Bland University in 2016.
4. At the time of seeing Ms Doe, I was employed by the Royal Big Hospital (RBH) as an intern. I have been employed in this capacity since January 2017.
5. On 1 December 2017 I was working in the Emergency Department of RBH, commencing at 2.00pm. At approximately 5.00pm I examined a female patient who identified herself as Jane Doe.
6. When asked what happened, Ms Doe stated her husband had punched her in the face. She had not lost consciousness.
7. On examination, I noted the patient was tender under her left eye (infraorbital margin) and cheek bone (zygoma), with widespread fine bruising (petechiae). The patient was fully conscious. There was blood inside her left eye, in front of the iris (hyphaema), with markedly decreased visual acuity (V/A).
8. I ordered an x-ray of the facial bones. The x-ray did not reveal any fractures.
9. As a result of my examination and investigations, I am able to state that the following injuries were present: hyphaema of the left eye (blood inside the eye) with decreased vision in the left eye; bruising of the left zygoma (cheekbone) with no fracture on x-ray.
10. I referred the patient to a specialist Ophthalmologist for ongoing care and follow-up. I had no further contact with the patient. I am unaware of the expected prognosis.

Giving evidence in court

An understanding of the court process is useful for any potential witness. Generally, a case involving an assault will be heard in the criminal courts. The presumption of innocence is very real in the criminal courts and the burden of proof in criminal matters is “beyond reasonable doubt”. The court layout in both civil and criminal matters includes the presiding court officer who sits at the “bench” at the front of the court. There is a witness box and a separate jury box. Juries are relied upon in criminal matters, but generally not in civil claims. The parties’ legal representatives, comprising barristers/counsel and solicitors, sit at the “bar table” facing the judge or magistrate (referred to as “Your Honour”).

Court proceedings are usually open to the public and there is seating at the back of the court to accommodate members of the public. A criminal trial proceeds in a set manner: following an opening address first by the prosecutor and then possibly by the defence, the factual witnesses are called to give evidence. Independent expert witnesses may also be called for the prosecution and defence. Finally, there are addresses by the prosecutor and defence barrister and then the jury receives direction from the judge.

Do I have to go to court?

If you are required to attend court, you will usually receive a subpoena or summons to attend court as a witness. A subpoena or a summons is a court order and you are required to comply or you risk becoming the subject of prosecution. On receipt of a subpoena or summons, contact the party who issued the document. The name of the person who issued the subpoena or summons is usually listed at the end of the document. Do not simply turn up at court at 10.00am on the first day of the trial or you could have a long and frustrating wait!

Once you have contacted the person who issued the subpoena, try to ascertain the likelihood that you will be required to give evidence and, if possible, the date and time that you will be required to attend court. Provide your contact details (e.g. mobile phone number). You may be able to put yourself on “standby”, for example, agree to attend court within one hour of being contacted, or make arrangements to give evidence by telephone or video. Confirm in writing any arrangements you make with respect to your attendance at court (see case history 3).

You may be able to apply for payment of a witness fee at the court to cover any out of pocket expenses.

Case history 3

Dr Young was working as an intern in the ED when she saw Rob Smith. Rob gave a history that he had been punched in the face by a security guard outside a hotel. The intern performed a careful physical examination and ordered x-rays which revealed an undisplaced nasal fracture.

Some months later, the intern received a request from hospital administration for a statement regarding her management of the patient. The police had requested the report because the alleged assailant had been charged with assault. Dr Young was provided with the relevant medical records and a signed authority from the patient. She prepared a brief, factual report and sent this to the hospital for forwarding to the police.

Twelve months later, Dr Young received a subpoena requiring her attendance at court in relation to this matter. The subpoena stated that Dr Young was required to attend court at 10.00am on Monday 5 June 2017 and that she “appear each day until the case is completed or until you are excused by the court. If you do not comply with this subpoena you may be arrested”.

At this time, Dr Young was working in another state. Dr Young contacted MDA National for assistance. She was advised to contact the solicitor who had issued the subpoena to inform the solicitor of her current place of work and contact details. Arrangements were made for Dr Young to give evidence by telephone if required. Dr Young sent an email to the solicitor confirming the arrangements that had been made. She also sought further advice from MDA National about giving evidence in court. On the scheduled day of the hearing Dr Young was contacted by the solicitor and informed that she would not be required to give evidence.

How should I prepare for court?

1. Before attending court

There is no substitute for good preparation before going to court. You should review your medico-legal report and the relevant medical records. Normally, you will be attending court as a factual witness, that is, you will be asked to give evidence about when and where the patient was examined, your findings and any treatment given. The line between a factual and expert medical witness can occasionally become blurred. The major pitfall to avoid is giving an opinion beyond or outside your expertise, e.g. a DIT providing evidence about the long term care requirements of a patient with a severe brain injury.

2. On the day

Know where the court is located and how long it will take to get there. Bring to the court a copy of your medico-legal report and the relevant medical records (if available). Dress in a formal and conservative manner.

What will happen when I give evidence?

Normally you will not be allowed into the court before giving evidence. Identify the correct courtroom and wait outside at the time you have been asked to attend. When it is your turn to give evidence, a court officer will show you into the court and take you to the witness box. Remain standing when you first enter the witness box. The court officer will ask you to either swear an oath or affirm to the court that the evidence you give will be truthful. If swearing an oath, the court officer will ask you to hold a bible and repeat the oath. If you have no religious beliefs, you may choose to "affirm", that is, take the oath without associated religious words or actions. You will then be asked to take a seat in the witness box.

Examination-in-chief

The barrister acting for the party who called you to give evidence will ask you a series of questions to take you through the information contained in your report and/or the medical records. Before doing this, the barrister will usually ask you to provide your name, qualifications, position and experience. The purpose of examination-in-chief is for you to provide your evidence to the judge and/or jury. On occasions, the judge may also ask you some questions to clarify certain issues.

Cross-examination and re-examination

When the examination-in-chief has concluded, the barrister acting for the other party will then question you. It is generally not like the aggressive cross-examination you have seen on TV! In some situations, there may be no cross-examination and the barrister will indicate that they have no questions to put to you. Otherwise, the barrister will ask you questions to probe particular issues in your report and evidence.

Your role is to inform the court and you should remember that you are not there to represent one side or the other. In particular, it is not your role to “defend your side”. You should try not to anticipate the question or its purpose, but simply consider each question on its own and answer only what is asked of you, in as few words as possible.

When the cross-examination has concluded, the first barrister has the opportunity to re-examine and clarify any issues raised during the cross-examination. No new matter can be raised at this time, only further questions about those issues already examined. It is then usual for the party that has called you to ask the judge to excuse you from court and you are then free to leave.

Tips on giving evidence

- 1.** Remember you are impartial. Your role is to inform the court and to help the judge and/or jury to better understand the evidence before it, not to assist one side or the other.
- 2.** Listen carefully to each question. Pause and decide if you are able to answer the question.
- 3.** Look at the person who is asking the question but provide your answer to the judge or jury. You may need to turn your head or swivel in your chair in order to do this.
- 4.** Answer succinctly and only what is asked of you. Do not over elaborate. If the question is not clear, ask for an explanation. If you are unable to answer the question, say so. Do not try and guess an answer to a question. For example, you should feel comfortable saying "I cannot remember what the patient said" or "I am sorry, I have had no experience in that area of medical practice and so any answer would be speculation on my part". It is also appropriate to indicate that while you may not have known the answer to a specific question in the past, you have subsequently become aware of the answer.
- 5.** If the question is ambiguous ask the barrister to rephrase the question.
- 6.** In cross-examination, answer with a "yes" or "no" providing such a reply would not be misleading. However, do not get lulled into saying "yes" or "no" when that is not an accurate answer. You are entitled to be assertive and firm about any propositions with which you do not agree.
- 7.** If you hear the word "objection" from either barrister, simply stop what you are saying, even if it is mid-sentence. Wait until the matter is dealt with by the judge. If you are in doubt, ask the judge to indicate to you when you can resume your response. If you have lost your train of thought, ask for the question to be repeated by the barrister.
- 8.** Remember you are not being prosecuted. Your role is to provide factual evidence, based on your report and recollection (if any) of your involvement in the patient's care.

Conclusion

Giving evidence does not have to be an anxious or stressful experience. Good preparation before going to court will ensure that you appropriately and professionally fulfil your role as a medical witness.



Find out
more

For more information visit mdanational.com.au or contact **1800 011 255**.

MDA National's experienced Medico-legal Advisers provide accurate, empathetic and timely medico-legal advice, with access to our 24/7 service for urgent matters.



mdanational.com.au Freecall: 1800 011 255

Adelaide

Level 1
26 Flinders Street
Adelaide SA 5000

Ph: (08) 7129 4500
Fax: (08) 7129 4520

Brisbane

Level 8
87 Wickham Terrace
Spring Hill QLD 4000

Ph: (07) 3120 1800
Fax: (07) 3839 7822

Hobart

Level 1, ABC Centre
1-7 Liverpool Street
Hobart TAS 7000

Ph: (03) 6231 6235
Fax: (03) 6234 2344

Melbourne

Level 3
100 Dorcas Street
Southbank VIC 3006

Ph: (03) 9915 1700
Fax: (03) 9690 6272

Perth

Level 3
88 Colin Street
West Perth WA 6005

Ph: (08) 6461 3400
Fax: (08) 9415 1492

Sydney

Level 5, AMA House
69 Christie Street
St Leonards NSW 2065

Ph: (02) 9023 3300
Fax: (02) 9460 8344